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# Decision

**Matter of:** Merrill Aviation & Defense

**File:** B-416837; B-416837.2

**Date:** December 11, 2018

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## DIGEST

1. Protest is denied where the record shows that the agency's technical evaluation of the protester's proposal was consistent with the terms of the solicitation.
2. Protest is denied where the record shows that the agency's evaluation of the awardee's past performance as relevant was consistent with the terms of the solicitation.

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## DECISION

Merrill Aviation & Defense (Merrill), of Saginaw, Michigan, protests the award of a contract to LOC Performance Products, Inc. (LOC), of Plymouth, Michigan, under request for proposals (RFP) No. W15QKN-17-R-0214, issued by the Department of the Army, Army Contracting Command-New Jersey, for improved armored cab modification kits. Merrill argues that the agency unreasonably evaluated proposals, and improperly made its source selection decision.

We deny the protest.

## BACKGROUND

The RFP, issued on October 2, 2017, as a small business set-aside, contemplated the award of a fixed-price contract for improved armored cab (IAC) modification kits for the Army's multiple launch rocket system to be performed over a 1-year base period and

four 1-year option periods. Agency Report (AR) Tab 2, RFP at 2; Combined Contracting Officer’s Statement of Facts and MOL (COS/MOL) at 2. The RFP established a total contract ceiling of 625 IAC modification kits and associated spare parts. AR, Tab 2, RFP at 2. Proposals were to be evaluated on a best-value tradeoff basis using three factors listed in descending order of importance: technical, past performance, and price. Id. at 92. The technical factor was comprised of manufacturing approach, quality assurance plan, and management plan subfactors. Id.

When describing their manufacturing approach, offerors were to provide a detailed approach for producing and testing the IAC modification kits. AR, Tab 2, RFQ at 88. Offerors were further instructed to address a minimum of 16 items, including a description of the material management process and production line validation process. Id. at 88-89. Manufacturing approaches would be evaluated for adequacy. Id. at 93. Offerors were further advised that their experience on programs of similar production complexity would be considered. Id.

For their quality assurance plans, offerors were instructed to address nine areas of their plans, including product acceptance systems, as well as their parts materials and processes. AR, Tab 2, RFP at 89. Quality assurance plans would be assessed for likelihood to produce compliant IAC modification kits. Id. at 93. As for their management plans, offerors were instructed to provide details of the manufacturing process evidencing compliance with the RFP’s requirement, including an integrated master schedule and a description of the configuration management system. Id. at 89. Management plans would be evaluated for their adequacy of approach. Id. at 93.

After receiving initial proposals, the agency established a competitive range consisting of three offerors, including both Merrill and LOC. AR, Tab 4, Source Selection Evaluation Board (SSEB) Report at 3. The agency conducted discussions and solicited final proposal revisions. COS/MOL at 6. The agency’s evaluation produced the following results:

	<b>Merrill</b>	<b>LOC</b>
<b>Technical</b>	Yellow/Marginal	Purple/Good
<b>Manufacturing Approach</b>	Green/Acceptable	Blue/Outstanding
<b>Quality Assurance Plan</b>	Yellow/Marginal	Purple/Good
<b>Management Plan</b>	Yellow/Marginal	Purple/Good
<b>Past Performance</b>	Relevant/Satisfactory	Relevant/Satisfactory
<b>Price</b>	\$118,954,694	\$132,583,806

AR, Tab 3, Source Selection Decision Document (SSDD) at 6. The SSA noted that LOC’s proposal had a higher technical rating, and that both offerors had the same past performance rating. AR, Tab 3, SSDD at 8. The agency determined LOC offered the better value based on LOC’s superior technical proposal, and the fact that Merrill’s

technical proposal was assigned four significant weaknesses. Id. at 9. After the agency awarded the contract to LOC, Merrill filed the instant protest.

## DISCUSSION

Merrill raises various challenges to the agency's evaluation and source selection decision. We have considered all of the allegations raised and find no basis to sustain the protest. We discuss Merrill's principal allegations below, but note, at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. SaxmanOne, LLC, B-414748, B-414748.3, Aug. 22, 2017, 2017 CPD ¶ 264 at 3.

### Evaluated Significant Weaknesses

Merrill's proposal was assigned a significant weakness under the manufacturing approach subfactor. That subfactor required each offeror to describe its materials management process, and provided the following instruction:

Describe the process for the procurement of purchased items in order to satisfy the delivery requirements. Describe how material quantities and purchase order placement dates will be determined. Describe the process that will be used to identify and acquire long lead time items.

AR, Tab 2, RFQ at 88. The firm's proposal was assigned a significant weakness because it did not adequately describe the process for the procurement of purchased items. AR, Tab 4, SSEB Report at 37. The agency noted that Merrill's proposed process was inadequate because purchased items would be tracked and managed in both Merrill's enterprise resource planning (ERP) system and in the ERP system of a subcontractor. Id. at 35-36. The agency determined that this process created a risk that information would not be accurately updated from one system to the other system. Id. at 37. The record further shows that the agency was concerned that an added level of complication and uncertainty would result from the firm having to manually enter data from one system into another system. COS/MOL at 9.

The protester contests this evaluation, asserting that its process did not introduce any additional complication because the process consisted solely of tracking materials in its subcontractor's system. Protester's Supp. Comments at 1. The record shows that Merrill's general manufacturing process consisted primarily of purchasing the majority of component parts and drop-shipping<sup>1</sup> them to its subcontractor's facility for assembly.

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<sup>1</sup> "Drop-ship" refers to a supply chain management system whereby the goods ordered are shipped not to the purchaser, but rather to another entity (usually the customer or  
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AR, Tab 9, Merrill Proposal at 8-9. When commencing the manufacturing process, Merrill would enter a project in its ERP system, and then the ERP system would automatically either pull component parts from existing inventory stock or create a purchase order. Id. at 12. Because any purchased items would be drop-shipped to its subcontractor, Merrill would provide copies of its purchase orders to that subcontractor. Id. at 88. The subcontractor would then create a “dummy” purchase order in its ERP system by manually entering the details of each purchase order provided by Merrill. Id. at 12, 88. The “dummy” purchase orders would then allow the subcontractor to compare materials received against materials purchased in order to identify whether any component parts were misplaced or lost during delivery. Id. at 12. Merrill’s proposal provides that this process eliminated any need for Merrill’s ERP system to connect directly with its subcontractor’s ERP system. Id. As a final step in the process, the subcontractor would provide weekly reports of materials delivered to Merrill, so that Merrill could enter the information in its ERP system and conduct periodic audits. Id. at 13.

In our view, the record provides us with no basis to find the agency’s conclusion unreasonable. Contrary to the protester’s argument, the proposal plainly demonstrates that Merrill’s materials management process relies on both its own ERP system and that of its subcontractor because tracking data is entered in each system and then manually entered into the other system. Furthermore, the agency’s concern that materials would not be properly updated in either system is warranted. The agency reasonably concluded that the protester’s ERP system requires the manual entry of purchase order information into its subcontractor’s ERP system. As such, we have no basis to question the agency’s determination that such a use of the subcontractor’s ERP system creates a risk that purchase orders would be inaccurate because those purchase orders are manually entered. To the extent that Merrill alleges that the manual entry does not create any appreciable risk, we note that disagreements with the agency’s judgment do not constitute a basis to sustain its protest. See Gonzales-Stoller Remediation Servs., Inc., B-406183.2 et al., March 2, 2012, 2012 CPD ¶ 134 at 5. Accordingly, we deny this protest allegation because the agency’s evaluation was plainly consistent with the information contained in the record.<sup>2</sup>

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wholesaler). Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/drop-ship> (last visited, December 10, 2018). In this instance, “drop-ship” refers to Merrill’s supply chain management of having materials ordered shipped directly to its subcontractor.

<sup>2</sup> In connection with this assigned weakness, Merrill also asserts that the alleged misevaluation of its proposal is evidence that the agency’s evaluation team lacked sufficient expertise to conduct a comprehensive evaluation as required by Federal Acquisitions Regulation § 15.303(b)(1). Protester’s Comments at 2. We dismiss this allegation as legally and factually insufficient. Our Bid Protest Regulations require that protests “[s]et forth a detailed statement of the legal and factual grounds of protest” and require a protester to “clearly state sufficient grounds of protest.” 4 C.F.R. §§ 21.1(c)(4),  
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The agency also assigned the protester's proposal a significant weakness under the quality assurance plan subfactor with regard to its obsolescence monitoring approach. The firm's proposal provided that its subcontractor would provide obsolescence monitoring and lifecycle analysis. AR, Tab 9, Merrill's Proposal at 61. While the firm would work with suppliers to establish availability projections for commercial items, the subcontractor would be responsible for communicating and proposing any changes with the agency based on component parts becoming obsolete during the performance period. Id.

The agency identified Merrill's proposal as flawed because the firm's obsolescence monitoring did not describe how its subcontractor would obtain obsolescence notices from suppliers. AR, Tab 4, SSEB, at 44-46. The agency noted that Merrill would receive any obsolescence notices from suppliers because it was the purchaser. Id. at 45. The agency's concern therefore stemmed from the fact that Merrill would receive obsolescence notices but the subcontractor would be responsible for tracking which parts were obsolete. Id. When challenging the weakness, Merrill alleges that its obsolescence monitoring approach was sound and stresses that its proposal demonstrated its subcontractor's significant experience performing this service. Protest at 11; Protester's Supp. Comments at 7.

After reviewing the record, we find the agency's evaluation to be reasonable. Merrill's proposal did not in fact describe how it would provide obsolescence notices to its subcontractor. While the firm's proposal shows that it would work with suppliers to establish availability projections and would conduct obsolescence monitoring in conjunction with its subcontractor, the firm's proposal does not definitively describe how it would communicate obsolescence notices to the subcontractor. AR, Tab 9, Merrill Proposal at 61. To this end, even if the firm and its subcontractor had an understood level of communication regarding obsolescence notices, it was incumbent upon the protester to describe this process with more details in its proposal because it is the offeror's duty to submit a well-written proposal as the agency has no duty to infer information. Intelligent Waves LLC, B-416169, B-416169.2, June 12, 2018, 2018 CPD ¶ 211 at 8. To the extent that the protester argues that its subcontractor's experience negates the need to review obsolescence notices or that obsolescence notices are not critical to its obsolescence monitoring process, we note that such argument primarily

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(f). These requirements contemplate that a protester will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Kodiak Base Operations Servs., LLC, B-414966 et al., Oct. 20, 2017, 2017 CPD ¶ 323 at 3. Here, the protester's allegation lacks any factual support. Thus, we dismiss this allegation because the firm has not provided us with any tangible evidence to substantiate a finding that the SSEB lacked sufficient expertise.

constitutes disagreement with the agency's evaluation, which, without more, does not provide a basis to sustain the protest. Unisys Corp., B-406326 et al., Apr. 18, 2012, 2012 CPD ¶ 153 at 8. Accordingly, we deny this protest allegation because the agency's evaluation was consistent with the solicitation's requirements.

The agency assigned the Merrill proposal another significant weakness for the firm's approach to production unit verification inspection (PVUI). As part of its quality assurance plan, each offeror was instructed to discuss its PVUI process because the selected contractor would be expected to complete PVUI prior to submitting hardware for government acceptance. AR, Tab 2, RFP at 35, 89. The selected contractor would be expected to provide a PVUI plan and procedure with a precise measuring system for manufactured parts (e.g., an x-ray for weld quality or a laser tracking system for dimensional metrology). Id. at 35. In other words, the selected contractor was to use measuring equipment to ensure that component parts and finished product were constructed to precise technical specifications.

Merrill's proposal explains that it uses nine measuring systems to ensure that the production verification units conform to contract specifications. AR, Tab 9, Merrill Proposal, at 65. Regarding the parts drop-shipped to its subcontractor, the firm's proposal explains that it and its subcontractors possess a wide range of test facilities to accommodate appropriate levels of verification, and describes seven acceptance test procedures that the subcontractor will utilize. Id. at 59. The firm's proposal also explains that it and the subcontractor conduct on-site witnessing of component parts at suppliers' facilities and obtain certificates of compliance for all critical components. Id. Merrill's proposal does not describe the measuring systems that the subcontractor has in place to test drop-shipped materials.

After reviewing Merrill's proposal, the agency assigned the significant weakness because it concluded that Merrill did not describe any PVUI testing equipment for the parts drop-shipped to the subcontractor. AR, Tab 4, SSEB, at 51. Merrill complains that the significant weakness was unreasonable because its proposal stated that certificates of compliance and on-site witnessing of component parts would be conducted. Protester's Comments at 11.

Here, we also find the agency's evaluation to be reasonable. The RFP required offerors to describe precise measuring systems when completing PVUI and Merrill's proposal does not describe its subcontractor's measuring systems at all. While the firm's proposal describes its measuring systems to be used on the three component parts that it manufactures at its facility, the firm does not describe what measuring systems its subcontractor would use to ensure that the drop-shipped component parts or final product conform to the precise technical specifications. AR, Tab 9, Merrill Proposal at 65. While the subcontractor may have extensive experience with IAC modification kits production and testing procedures for the component parts as well as plans to solicit certificates of compliance from suppliers and perform on-site witnessing of component parts, none of those processes negate the need to describe the measuring systems as required under the terms of the RFP. Accordingly, we deny this protest allegation

because we conclude that the agency's evaluation was consistent with the applicable evaluation criteria.

Finally, Merrill challenges the significant weakness assigned to its management plan. Under the management plan subfactor, the RFP instructed offerors to describe the configuration management system that would be used for this project. AR, Tab 2, RFP at 89. The agency assigned a significant weakness to Merrill's proposal because the proposal indicated that Merrill's subcontractor would make all data submissions to the agency. AR, Tab 4, SSEB, at 57. The agency noted that Merrill's proposal was not in conformance with the solicitation's requirements because the RFP required that the prime contractor make all data submissions directly to the project office. Id. The agency further noted that the firm's proposal created a risk because the firm could only access the data through the subcontractor's configuration management department and therefore could not independently fulfill its duties under the contract. Id.

The protester alleges that the evaluation was unreasonable because the RFP instructed offerors to describe how their configuration management would be controlled at the subcontractor level. Protester's Comments at 12 (citing AR, Tab 2, RFP at 89). Thus, Merrill essentially asserts that the RFP allowed for a subcontractor to play a meaningful role in the configuration management plan and that it should not have been downgraded for proposing to utilize its subcontractor in this manner.

In our view, that argument misses the point. The RFP provided that the selected contractor's configuration management plan should also include its plan for data management. AR, Tab 2, RFP at 36. The agency asserts that the prime contractor was required to make all contract data requirements list (CDRL) submissions under the stated data management responsibilities. This is critical because, while the protester has alleged that its subcontractor could play a role in the configuration management plan generally, the firm has not established that its subcontractor was specifically permitted to make any CDRL submissions. Thus, the protester has not successfully challenged the agency's interpretation that only the prime contractor was permitted to make CDRL submissions. AR, Tab 9, Merrill Proposal, at 96. Based on our review of the solicitation, we do not find the agency's evaluation to be unreasonable because Merrill's proposal plainly provided that its subcontractor would make all CDRL submissions. Accordingly, we deny this protest allegation.

#### Assignment of Significant Strengths

Merrill alleges that its proposal should have received multiple significant strengths under each of the technical subfactors. As a representative example, the firm has alleged that it should have received a significant strength for its approach to production line validation (PLV) under the manufacturing approach subfactor. Protest at 7. According to the protester, its plan exceeded the agency's requirements because it is the only offeror with experience manufacturing and integrating the IAC modification kits on a prior contract, and therefore its risk of unsuccessful contract performance is much lower than its competitors. Id.

Here, the record shows that the agency considered the protester's experience manufacturing and integrating the IAC modifications kits on a previous contract as not indicative of success on the instant contract. See AR, Tab 4, SSEB, at 49-50. In this regard, we note that the record does not reflect that Merrill has extensive experience performing production line validation of IAC modification kits; rather, the record shows that its subcontractor has experience performing PLVs on other contracts, and that the firm's subcontractor performed a pilot line validation on an IAC engineering, manufacturing, and development contract. AR, Tab 10, Merrill Evaluation Notice Responses. While both of those experiences tend to indicate that Merrill will be able to perform PLV on the instant contract, the argument simply represents the protester's disagreement with the agency's judgment that the experience was not a strong indicator of exceptional performance on the instant procurement, which, without more, does not provide a basis to sustain the protest. See Unisys Corp., supra. Accordingly, we deny this protest allegation.<sup>3</sup>

Similarly, the firm alleges that the agency should have assigned its proposal a significant strength for its corrosion prevention and deterioration plan under the quality assurance plan subfactor because it planned to leverage its subcontractor's experience. Protest's Comments at 9-10. In response, the agency asserts that the Merrill's proposal offered nothing that could be deemed an exceptional benefit to the agency. COS/MOL at 18. As above, the protester's assertion does not provide us with a basis to sustain the protest because it constitutes a disagreement with the agency's view of the relative worth of the subcontractor's experience. Accordingly, we deny the protest allegation.

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<sup>3</sup> The protester argues that it should have received a significant strength for its knowledge of the ballistic weld procedure under the quality assurance plan subfactor. In responding to the protest allegation, the agency acknowledged that it assigned a significant strength for the protester's knowledge of the ballistic weld procedures, but incorrectly assigned the significant strength to the firm's proposal under the manufacturing approach subfactor. After reviewing the record, we do not find that this resulted in competitive prejudice. Competitive prejudice is an essential element of every protest, and requires that the protester prove that, but for the agency's actions, it would have received the award. Straughan Env'tl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 12. Here, the agency's admitted error did not result in competitive prejudice because the agency already considered this aspect of the protester's proposal and noted that the firm's proposal exceeded the solicitation requirements for the quality assurance plan. AR, Tab 4, SSEB, at 42 (Merrill "exceeded the solicitation requirements of Section L, para. L.4.2.c and Section C, [Statement of Work], para 3.6.9.1 by taking the initiative to fabricate and test three coupons from actual IAC ballistic weld joints"). Accordingly, we deny this protest allegation because, even if the agency failed to list the significant strength under the evaluation section discussing the firm's quality assurance plan, the record shows that the agency considered this beneficial aspect of the firm's proposal.

## LOC's Past Performance

The protester alleges that the agency misevaluated LOC's proposal by assigning the awardee's proposal a relevant/satisfactory rating under the past performance factor. Specifically, the protester contends that LOC had no relevant experience as defined by the RFP's evaluation criteria. Protester's Supp. Comments at 11. The protester therefore asserts that LOC should have received a no confidence or neutral confidence rating. Id. Additionally, the protester asserts that the agency unreasonably gave the awardee's credit for the past performance of another company. Protest at 14-15.

The RFP provides that an offeror's past performance would be evaluated for its quality of performance on recent and relevant contracts; accordingly, the past performance evaluation would be conducted in two phases. AR, Tab 2, RFP at 94. During the first phase, the agency would determine whether offerors' referenced contracts were both recent and relevant. Id. During the second phase, the agency would examine offerors' recent and relevant past performance, and assign a confidence rating based on quality of performance on those contracts. Id.

When determining whether offerors' referenced contracts were relevant, the RFP contains multiple provisions bearing on this issue. In section M.5.2, the RFP provides that "[r]elevant is defined as contracts demonstrating technical/management capabilities the same as or similar to those required to perform on this item." AR, Tab 2, RFP at 94. In section M.5.4, the RFP provides the following:

The first aspect of the past performance evaluation is to assess the Offerors' past performance to determine if work performed in the past is relevant as relevant is defined in M.5.2 above. Relevancy is not separately rated; however, the following criteria will be used to establish what is relevant, which shall include similarity of service/support, complexity (including welding requirements as stated in [the performance work statement]), dollar value, contract type, and degree of subcontracting/teaming.

Id. The RFP further defined a relevant rating as "[p]resent/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires." Id.

Here, we do not find the agency's evaluation to be unreasonable because the record shows that the referenced contracts demonstrated similar technical capabilities and contract types. The record shows that the agency evaluated two of the protester's referenced contracts as relevant, the Bradley and M1 contracts. AR, Tab 12, LOC Past Performance Evaluation, at 5 (unpaginated). The Bradley contract was a fixed-price contract valued at \$162 million, and required LOC to procure, manufacture, package, and kit an improved track and suspension system. AR, Tab 11, LOC Past Performance Proposal, at 13-14, 28. Thus, the agency reasonably considered this contract to be relevant because it has a similar dollar value, similar contract type, and required similar technical capabilities when compared to the instant contract. While the protester

asserts that the Bradley contract does not have a similar scope to the instant contract because it did not involve welding, we note that the instant contract also requires the selected contractor to purchase and kit the component parts and provide quality assurance and configuration management services. As a result, we do not find the agency's conclusion to be unreasonable because the contracts, while not requiring identical services, appear to require similar technical capabilities.

With regard to the M1 contract, the record shows that it was a fixed-price contract valued at \$61,000 and required LOC to manufacture ammunition doors for the M1 vehicle. AR, Tab 11, LOC Past Performance Proposal, at 63. Although the dollar value is not similar, we find the agency's evaluation to be reasonable because, like the instant contract, the M1 contract required LOC to manufacture a part for a military vehicle in accordance with a technical data package and also to provide quality assurance and reporting services. Id. at 68. The referenced contract also discusses LOC's plan for first article testing, which is similar to the PVUI requirement on the instant contract. Id. Thus, even though the M1 contract was of a vastly lower dollar value, we do not find the agency's evaluation to be unreasonable because the RFP's relevancy evaluation criteria was primarily concerned with whether a referenced contract had similar technical requirements and the M1 contract required LOC to perform many of the services that the instant RFP requires. Accordingly, we deny this protest allegation because the protester has not demonstrated that either of LOC's referenced contracts was unreasonably evaluated as relevant.

To the extent the protester argues the agency unreasonably attributed the past performance of an acquired company to LOC, the record does not substantiate that challenge. As noted above, the record shows that LOC identified six prior contracts for its past performance review. While three of those contracts were attributable to the acquired company, the record shows that the agency did not in fact consider the acquired company's referenced contracts when evaluating LOC's past performance. AR, Tab 12, LOC Past Performance Evaluation, at 7 (unpaginated). Accordingly, we deny this protest allegation because the record does not show that the agency unreasonably attributed referenced contracts of another company to LOC.

#### Source Selection Decision

As a final matter, the protester alleges that the agency made an unreasonable source selection decision because it relied on flawed technical evaluations. Protester's Comments at 19. This allegation is derivative of the challenges to the agency's evaluation. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. Technology and Telecomms. Consultants, Inc., B-415029, Oct. 16, 2017, 2017 CPD ¶ 320 at 6.

The protest is denied.

Thomas H. Armstrong  
General Counsel